

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1162

AN ACT

AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1262; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-1817 AND 33-1818; AMENDING SECTION 41-2198.02, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 33, chapter 9, article 3, Arizona Revised Statutes,
3 is amended by adding section 33-1262, to read:

4 33-1262. Amendment to condominium documents; applicability

5 AN AMENDMENT TO THE CONDOMINIUM DOCUMENTS DOES NOT APPLY TO ANY COURT
6 OR ADMINISTRATIVE ACTION FILED BEFORE THE AMENDMENT IS ADOPTED.

7 Sec. 2. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
8 amended by adding sections 33-1817 and 33-1818, to read:

9 33-1817. Amendment to community documents; applicability

10 AN AMENDMENT TO THE COMMUNITY DOCUMENTS DOES NOT APPLY TO ANY COURT OR
11 ADMINISTRATIVE ACTION FILED BEFORE THE AMENDMENT IS ADOPTED.

12 33-1818. Declaration amendments

13 A. AMENDMENTS TO THE DECLARATION THAT DO NOT APPLY UNIFORMLY TO
14 SIMILAR LOTS ARE NOT EFFECTIVE WITHOUT THE APPROVAL OF THE OWNERS WHOSE
15 INTERESTS WOULD BE ADVERSELY AFFECTED UNLESS THE DECLARATION FAIRLY APPRISES
16 PURCHASERS THAT THE AMENDMENTS TO THE DECLARATION MAY BE MADE.

17 B. THIS SECTION SHALL NOT APPLY TO AMENDMENTS ADOPTED BY A DECLARANT
18 IN ACCORDANCE WITH THE AMENDMENT PROVISIONS IN THE DECLARATION.

19 Sec. 3. Section 41-2198.02, Arizona Revised Statutes, is amended to
20 read:

21 41-2198.02. Orders; penalties; disposition; attorney fees

22 A. The administrative law judge may order any party to abide by the
23 statute, condominium documents, community documents or contract provision at
24 issue and may levy a civil penalty on the basis of each violation. For
25 purposes of actions brought under the Arizona mobile home parks residential
26 landlord and tenant act, the civil penalty shall not exceed five hundred
27 dollars. All monies collected pursuant to this article shall be deposited in
28 the state general fund to be used to offset the cost of administering the
29 administrative law judge function, except that monies collected from disputes
30 involving condominiums or planned communities as prescribed in section
31 41-2198.01, subsection B shall be deposited in the condominium and planned
32 community hearing office fund established by section 41-2198.05. If the
33 petitioner prevails, the administrative law judge shall order the respondent
34 to pay to the petitioner the filing fee required by section 41-2198.01.

35 B. The order issued by the administrative law judge is binding on the
36 parties unless a rehearing is granted pursuant to section 41-2198.04 based on
37 a petition setting forth the reasons for the request for rehearing, in which
38 case the order issued at the conclusion of the rehearing is binding on the
39 parties. Notwithstanding sections SECTION 41-1092.08, subsection B and
40 SECTION 41-1092.09, an order issued by the administrative law judge in an
41 action regarding a condominium or planned community is the final
42 administrative decision and is not subject to a request for rehearing. The
43 order issued by the administrative law judge is enforceable through contempt
44 of court proceedings.

1 C. NOTWITHSTANDING ANY PROVISION OF THE CONDOMINIUM DOCUMENTS OR THE
2 COMMUNITY DOCUMENTS, IN AN ACTION REGARDING A CONDOMINIUM OR PLANNED
3 COMMUNITY, THE ADMINISTRATIVE LAW JUDGE SHALL NOT AWARD ATTORNEY FEES OR
4 COSTS AND A COURT SHALL NOT AWARD ATTORNEY FEES OR COSTS IN ANY APPEAL FROM
5 AN ADMINISTRATIVE ORDER UNLESS THE ADMINISTRATIVE LAW JUDGE OR COURT MAKES A
6 FINDING THAT THE ATTORNEY OR PARTY DID ANY OF THE FOLLOWING:

7 1. BROUGHT OR DEFENDED A CLAIM WITHOUT SUBSTANTIAL JUSTIFICATION.
8 2. BROUGHT OR DEFENDED A CLAIM SOLELY OR PRIMARILY FOR DELAY OR
9 HARASSMENT.

10 3. UNREASONABLY EXPANDED OR DELAYED THE PROCEEDING.
11 4. ENGAGED IN ABUSE OF DISCOVERY.

12 D. IF THE ADMINISTRATIVE LAW JUDGE OR COURT MAKES A FINDING PURSUANT
13 TO SUBSECTION C OF THIS SECTION, THE ADMINISTRATIVE LAW JUDGE OR COURT MAY
14 ALLOCATE THE PAYMENT OF ATTORNEY FEES AMONG THE OFFENDING ATTORNEYS AND
15 PARTIES, JOINTLY OR SEVERALLY, AND MAY ASSESS SEPARATE AMOUNTS AGAINST AN
16 OFFENDING ATTORNEY OR PARTY.

17 E. ATTORNEY FEES SHALL NOT BE ASSESSED PURSUANT TO SUBSECTION C OF
18 THIS SECTION IF AFTER FILING AN ACTION A VOLUNTARY DISMISSAL IS FILED FOR ANY
19 CLAIM OR DEFENSE WITHIN A REASONABLE TIME AFTER THE ATTORNEY OR PARTY FILING
20 THE DISMISSAL KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE CLAIM OR DEFENSE
21 WAS WITHOUT SUBSTANTIAL JUSTIFICATION.

22 F. IF THE ADMINISTRATIVE LAW JUDGE OR COURT MAKES A FINDING PURSUANT
23 TO SUBSECTION C OF THIS SECTION, THE ADMINISTRATIVE LAW JUDGE OR COURT IN ITS
24 DISCRETION MAY AWARD DOUBLE DAMAGES NOT TO EXCEED FIVE THOUSAND DOLLARS
25 AGAINST AN ATTORNEY OR A PARTY.

26 G. FOR THE PURPOSES OF SUBSECTION C OF THIS SECTION, "WITHOUT
27 SUBSTANTIAL JUSTIFICATION" MEANS THAT THE CLAIM OR DEFENSE CONSTITUTES
28 HARASSMENT, IS GROUNLESS AND IS NOT MADE IN GOOD FAITH.